

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW

DELHI

COURT-VI

COMPANY PETITION: CAA - 69/(PB)/2021

Connected With

COMPANY APPLICATION: CA (CAA) – 11/(PB)/2021

Section 230-232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the rules framed under the National Company Law Tribunal Rules, 2016.

In the matter of:

GALLANTT METAL LIMITED

Registered office at: "GALLANTT HOUSE",

I-7, Jangpura Extension, New Delhi – 110014;

CIN: L27109DL2005PLC350524

...Applicant Company No. 1/ Transferee Company

WITH

GALLANTT ISPAT LIMITED

Registered office at: "GALLANTT HOUSE",

I-7, Jangpura Extension, New Delhi – 110014;

CIN: L27109DL2005PLC350523

...Applicant Company No. 2/Transferor Company No- 1

AND



AAR COMMERCIAL COMPANY LIMITED

Registered office at: "GALLANTT HOUSE",

I-7, Jangpura Extension, New Delhi – 110014;

CIN: L63090DL1982PLC354818

...Applicant Company No. 3/Transferor Company No-2

AND

Their Respective Shareholders & Creditors

CORAM:

Shri. P.S.N Prasad, Hon'ble Member (Judicial)

Shri Rahul Bhatnagar, Hon'ble Member (Technical)

Counsel for Applicant: Mr. Abhishek Rao, Mr. Shailesh Suman

ORDER

Per RAHUL BHATNAGAR, MEMBER (JUDICIAL)

Date: 20.05.2022

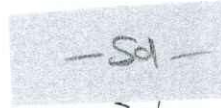
1. This application has been filed by the applicant Companies under Sections 230 to 232 of the Companies Act, 2013, read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, and the National Company Law Tribunal Rules, 2016, for the purpose of the approval of the Scheme of Amalgamation of the Transferor Companies into the Transferee Company. The

copy of the Scheme of Amalgamation (hereinafter referred as the "Scheme"), has been placed on record.

2. The "Transferee Company/Applicant Company No. 1", Gallantt Metal Limited was incorporated under the Companies Act, 1956 on 07.02.2005, having its registered office situated at at "Gallantt House", I-7, Jangpura Extension, New Delhi-110014.
3. The "Transferor Company No.1 /Applicant Company No.2", Gallantt Ispat Limited was incorporated under the Companies Act, 1956 on 11.02.2005, having its registered office situated at at "Gallantt House", I-7, Jangpura Extension, New Delhi-110014.
4. The "Transferor Company No.2/Applicant Company No.3", AAR Commercial Company Limited was incorporated under the Companies Act, 1956 on 28.06.1982, having its registered office situated at at "Gallantt House", I-7, Jangpura Extension, New Delhi-110014.

5. A perusal of the petition discloses that initially the First Motion application was filed before this Bench, vide

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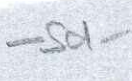
Company Application (CAA) No. CA (CAA) No. 11/PB/ 2021. Vide order dated 26.02.2021, the meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of Applicant Company No. 1 & 2 were directed to be held. Vide same order meeting of Equity Shareholders of Applicant Company No. 3 was directed to be held and meeting of Secured/Unsecured Creditors was dispensed with.

6. Subsequently, the meetings mentioned above were held on 08.04.2021, wherein, the proposed Scheme was unanimously approved by the members, secured creditors and unsecured creditors present and voting in the said meetings of the respective Applicant Companies.

7. The Chairperson has compiled his report and has filed the same duly affirmed by his affidavit dated 13/04/2021. A copy of the report was placed on record.

8. The Applicant Companies were directed to carry out publication in the newspapers. It is seen from the records that the petitioners have filed an Affidavit dated 15.09.2021 affirming compliance and disclosing that the applicants have effected publication in 'Business Standard' (English,


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Delhi edition) and 'Business Standard' (Hindi, Delhi edition), both dated 05.08.2021. In addition to the public notice, notices were served on to the Regional Director (Northern Region), Registrar of Companies, NCT of Delhi and Haryana, Official Liquidator, the Income Tax Department and to the other relevant sectoral regulators.

9. Pursuant to the notice issued to the Regional Director, RoC, and Official Liquidator, they have filed their report and participated in the proceedings.

10. The Regional Director (Northern Region) has filed its representation dated 22.09.2021 in which it is submitted that basis report from Registrar of Companies, has made certain observations which have been replied by the applicant companies. The Regional Director has observed that:-

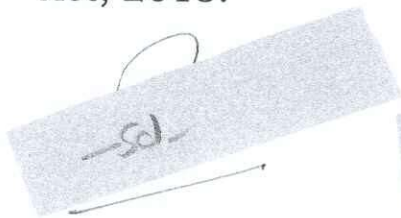
"In para-16 of the scheme under heading "CHANGE OF NAME" it is stated that upon the scheme coming into effect pursuant to section 232(3) of the Act, the name of the Transferee company shall be changed to "GALLANTT ISPAT Limited." In view of the above it is to submit that the above



change of name pertains to the amendment of the Memorandum of Association (MOA) of the Transferee Company which requires compliance of section 13 of the Companies Act 2013 and that fall under the domain of the RoC. The Hon'ble Tribunal may kindly direct the Applicant Company to comply with the provisions of Section 13 of the Act on post-merger to give effect to such change of name of the Transferee Company"

11. The Applicants have duly filed their reply to the observations of the Regional Director stating the following:-

- That, as per clause 16.2 of the scheme of amalgamation, the Transferee Company/Applicant Company 1 shall file the requisite documents/information (if any required) with the Registrar of Companies or any other Applicable Authority for amendment in the Memorandum of Association of the transferee company as required under the provisions of Section 13 of the Companies Act, 2013.







- That Transferor Companies and Transferee Companies are law abiding entities and are committed to adhere to the provisions of the law. The Transferee Company/Applicant Company 1 will ensure compliance with all the provisions of the law post the approval of proposed scheme of amalgamation.
- That the Transferor Companies and Transferee Company also undertake to comply with all the provisions of laws as may be directed by the Hon'ble Tribunal.

12. The Official Liquidator has filed its report dated 27.09.2021, wherein no specific objection has been raised against the approval of the Scheme. It is submitted in the report that the official liquidator has not received any complaint against the proposed Scheme from any person/party interested in the Scheme in any manner and that the affairs of both the transferor companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest.

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13. The Income Tax Department has made certain observations which have been replied by the applicant companies. The Income Tax Department has observed that:-

- i. The following assessment is pending in case of AAR Commercial Company Limited:

SL. No	Name	PAN	Assessment Year	Section
1.	M/s AAR Commercial Company Limited	AACCA2642K	2015-16	148

Apart from the above, following demands are outstanding as per departmental portal in the case of AAR Commercial Company Limited:

SL. No	Name	PAN	Assessment Year	Outstanding Demand
1.	M/s AAR Commercial Company Limited	AACCA2642K	2011-12	31,657
			2012-13	2,328
			2015-16	8,67,52,131
			2018-19	7,26,370

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It is further stated in the report that the Income Tax Officer, Ward -3(1), Kolkata has no objection on amalgamation scheme of above companies if the transferee company indemnified the above mentioned liabilities and pending proceedings.

- ii. The following assessment is pending in case of M/s GallanttIspat Limited and M/s Gallantt Udyog Limited:

SL. No	Name	PAN	Assessment Year	Section
1.	M/s GallanttIspat Limited	AACCG2969B	2013-14	148
2.	M/s Gallantt Udyog Limited	AAVCCG1245L	2013-14	148

Apart from the above, following demands are outstanding as per departmental portal in the case of M/s GallanttIspat Limited and M/s Gallantt Udyog Limited:







SL. No	Name	PAN	Outstanding Demand
1.	M/s Gallantt Ispat Limited	AACCG2969B	Rs. 1,55,77,160/-
2	M/s Gallantt Udyog Limited	AAVCCG1245L	Rs. 66,57,790/-

It is further stated in the report that the above demands are mainly because of mismatch of TDS of Gallantt Udyog Limited as amalgamated with Gallantt Ispat Limited. The Assistant Commissioner of Income Tax, Central Circle, Varanasi has no objection on amalgamation scheme of above companies if the transferee company indemnified the above mentioned liabilities and pending proceedings.

14. The Transferee Company M/s Gallantt Metal Limited has filed an indemnity cum undertaking dated 02.05.2022 stating that any outstanding demand / liability of the Transferor Companies shall be paid by Transferee Company M/s Gallantt Metal Limited.

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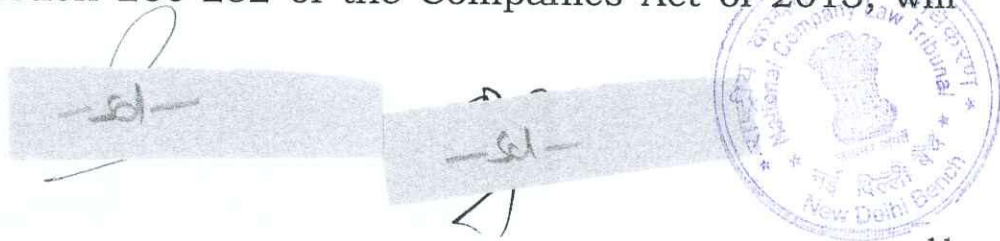
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15. In this petition it has also been affirmed that no proceeding for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under provisions of Companies Act, 1956 is pending against the Petitioner Companies.

16. Certificates of respective Statutory auditors of all the petitioner companies, have been placed on record to the effect that Accounting Treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standard notified by the Central Government as specified under the provisions of Section 133 of the Companies Act, 2013.

17. The shareholders of the applicant companies are the best judges of their interest, fully conversant with market trends, and therefore, their decision should not be interfered with by Tribunal for the reason that it is not a part of judicial function to examine entrepreneurial activities and their commercial decisions. It is well settled that the Tribunal evaluating the Scheme, of which sanction is sought under Section 230-232 of the Companies Act of 2013, will



not ordinarily interfere with the corporate decisions of companies approved by shareholders and creditors. It has also been affirmed in the petition that the Scheme is in the interest of all the transferor companies and the transferee company, including their shareholders, creditors, employees and all concerned.

18. In view of the foregoing, upon considering the approval accorded by the members and creditors of the Petitioner companies to the proposed Scheme, and the affidavits filed by the Regional Director, Northern Region, Ministry of Corporate Affairs and the report of official liquidator, there appears to be no impediment in sanctioning the present Scheme.

- I. Consequently, sanction is hereby granted to the Scheme under Section 230 to 232 of the Companies Act, 2013.
- II. The Petitioners shall however remain bound to comply with the statutory requirements in accordance with law.
- III. Notwithstanding the above, if there is any deficiency found or, violation committed, qua any enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way of action being taken,

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albeit in accordance with law, against the concerned persons, directors and officials of the petitioners.

IV. While approving the Scheme as above, we further clarify that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

V. This tribunal further orders that:

- a) *That the Transferor Companies shall stand dissolved without following the process of winding-up; and*
- b) *That all the property, rights and powers of both the Transferor Companies, be transferred without further act or deed, to the transferee company and accordingly the same shall, pursuant to Section 232 of the Companies Act, 2013, be transferred to and vest in the transferee company.*
- c) *That all the liabilities and all the duties of both the Transferor Companies, be transferred without*

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further act or deed, to the transferee company and accordingly the same shall, pursuant to Section 232 of the Act, be transferred to and become the liabilities and duties of the transferee company; and

- d) *That all proceedings now pending by or against the Transferor Companies, be continued by or against the transferee company; and*
- e) *That all the employees of the Transferor Companies in service, on the date immediately preceding the date on which the scheme takes effect, i.e. the effective date, shall become the employees of the transferee company on such date, without any break or interruption in service and upon terms and condition not less favorable than those subsisting in the concerned Transferor Companies on the said date.*
- f) *That Petitioner companies shall, within thirty days of the date of the receipt of this order, cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such*

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certified copy being so delivered to both the Transferor Companies shall be dissolved and the Registrar of Companies shall place all documents relating to all the Transferor Companies registered with him on the file, kept by him in relation to the transferee company and the files relating to all the petitioner companies shall be consolidated accordingly; and

g) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

The petition stands disposed of on the above terms.

Let copy of the order be served to the parties.

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(RAHUL BHATNAGAR)
Member (Technical)

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(P.S.N. PRASAD)
Member (Judicial)



23.5.2021
Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110003